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7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
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10 Jo Whigham, )  
11 Plaintiff(s), ) No. 05-1128 BZ  
12 v. ) **ORDER GRANTING DEFENDANT'S**  
13 Greyhound Lines, Inc., ) **MOTION TO DISMISS**  
14 Defendant(s). )  
15

16 On June 6, 2005, I dismissed plaintiff Jo Whigham's  
17 complaint against defendant Greyhound Lines, Inc. with leave  
18 to amend.<sup>1</sup> On June 15, 2005, plaintiff filed a "Motion for  
19 Response to Missive of Judge Zimmerman & Greyhound Lines  
20 Inc.," which I will deem to be her amended complaint. Now  
21 before me is defendant's motion to dismiss plaintiff's entire  
22 action pursuant to Federal Rules of Civil Procedure 8, 12(b),  
23 and/or 41(b). Although plaintiff has filed no opposition to  
24 defendant's motion, she appeared before me for a case  
25 management conference and hearing on defendants' motion to  
26 strike on August 8, 2005, and argued fervently, albeit in

27 <sup>1</sup> Both parties have consented to the jurisdiction of a  
28 United State Magistrate Judge for all proceedings including  
entry of final judgment pursuant to 28 U.S.C. § 636(c).

1 rambling fashion, in support of her claims. I therefore  
2 consider her claims on the merits.

3 Plaintiff's amended complaint, construed liberally in her  
4 favor, see Balistreri, 901 F.2d at 699, fails to state a claim  
5 upon which relief may be granted.<sup>2</sup> See Fed. R. Civ. P.  
6 12(b)(6). As best as I understand, plaintiff contends that  
7 she is a large stockholder in defendant, and that problems  
8 with "air quality" at the Denver Station and on the bus from  
9 Denver to Salt Lake City caused her to itch. She asserts that  
10 she had "shortness of breath," and woke up from a sound sleep  
11 with "violent coughing spasms." Finally, she appears to  
12 allege that a Greyhound bus driver "ousted" her "from the  
13 company," and that another driver lied to passengers about the  
14 temperature inside the bus.

15 While plaintiff purports to bring a claim under the  
16 Fourteenth Amendment, she has not alleged any facts to show  
17 that Greyhound or its employees were acting as agents of the  
18 state. Apao v. Bank of New York, 324 F.3d 1091, 1093 (9th  
19 Cir. 2003) ("The Fourteenth Amendment ... shields citizens  
20 from unlawful governmental actions, but does not affect  
21 conduct by private entities."). Merely being open to the  
22 public is insufficient to show state involvement for purposes  
23 of the Fourteenth Amendment. Central Hardware Co. v. NLRB,  
24 407 U.S. 539, 546-47 (1972); Scott v. Eversole Mortuary, 522

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26 <sup>2</sup> The court must liberally construe a pro se complaint,  
27 giving the plaintiff the benefit of any doubt. See Balistreri  
28 v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990);  
Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623  
(9th Cir. 1988).

1 F.2d 1110, 1116 (9th Cir. 1975) ("The fact that a private  
2 business holds itself open to the public cannot be  
3 determinative of the degree of state involvement in its  
4 activities.").

5 Plaintiff also appears to assert a claim under the  
6 Comprehensive Environmental Response, Compensation, and  
7 Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq. As I noted  
8 in my prior order, "[t]o maintain a cause of action under  
9 CERCLA, a plaintiff must establish: (1) the site in question  
10 is a 'facility' as defined in the statute, (2) the defendant  
11 is a responsible person, (3) a release, or threatened release,  
12 of a hazardous substance has occurred, and (4) such release or  
13 threatened release caused the plaintiff to incur response  
14 costs." Combined Counties Police Ass'n v. 55 South  
15 Partnership, 1996 WL 521285, \*3 (N.D. Ill. Sept. 11, 1996)  
16 (citing Acme Printing Co. v. Menard, Inc., 881 F. Supp. 1237,  
17 1248 (E.D. Wisc. 1995); Kerr-McGee Chemical Corp. v. Lefton  
18 Iron & Metal Co., 14 F.3d 321 (7th Cir. 1984)); see also U.S.  
19 v. Chapman, 146 F.3d 1166, 1169 (9th Cir. 1998). Although  
20 plaintiff has alleged that the site or sites in question  
21 constitute a "facility," see 42 U.S.C. § 9601(9), she has  
22 failed to allege sufficient facts to support the other  
23 elements of her CERCLA claim. In particular, plaintiff has  
24 not alleged that a release or threatened release of a  
25 "hazardous substance" within the meaning of CERCLA occurred.  
26 See 42 U.S.C. § 9601(14). Nor has she alleged that she  
27 incurred response costs as a result of such a release or  
28 threatened release. See Romeo v. General Electric Corp., 922

1 F. Supp. 287, 289 (N.D. Cal. 1994) ("A CERCLA claim may not be  
2 maintained absent allegations of at least one type of response  
3 cost cognizable under CERCLA.") (citations and internal  
4 quotation marks omitted). I therefore find that the amended  
5 complaint fails to state a claim under CERCLA.

6 Plaintiff has not properly alleged any other claims that  
7 can be addressed in federal court. As defendant's motion to  
8 dismiss is unopposed, the amended complaint fails to state a  
9 claim upon which relief may be granted, and my efforts in  
10 court to get Ms. Whigham to articulate facts which might  
11 provide a basis for relief were unsuccessful, **IT IS HEREBY**  
12 **ORDERED** that defendant's motion to dismiss is **GRANTED** and  
13 plaintiff's complaint is **DISMISSED WITH PREJUDICE**. The  
14 hearing currently scheduled for September 7, 2005, is vacated.  
15 Plaintiff's motions to have a say in policy if it's necessary  
16 (Docket Entry # 5); to order Greyhound to have purer air  
17 quality (Docket Entry # 6); to be able to fire if necessary  
18 (Docket Entry # 7); to strike Lombardi, Loper & Conant, LLP as  
19 attorneys for Greyhound (Docket Entry # 10); to have the  
20 Chicago station remove that morbid artwork from the premises  
21 and repaint the station (Docket Entry # 11); and to have  
22 Greyhound Washington, D.C. station New York City check  
23 passenger luggage(s) for a fee (Docket Entry # 19) are **DENIED**  
24 as moot.

25 Dated: August 19, 2005

26   
27 Bernard Zimmerman  
28 United States Magistrate Judge

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